

### **REMARKS**

Currently, claims 1-47 remain pending in the present application, including independent claims 1, 28, and 47.

In the Office Action mailed May 18, 2006, claims 1-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen et al. (US Patent No. 5,990,377). In the Office Action, it was stated that Chen et al. constitutes prior art under 35 U.S.C. § 102(e).

Chen et al. and the present application were both subject to assignment to Kimberly-Clark Worldwide, Inc. at the time the invention was made. The files of the present application refer to an assignment recorded in the PTO at Reel and Frame Nos. 013163/0242 to Kimberly-Clark Worldwide, Inc. Likewise, Chen et al. was also formally assigned to Kimberly-Clark Worldwide, Inc. The present application is a continuation-in-part of U.S. Patent Application Serial No. 09/684,039 and U.S. Patent Application Serial No. 09/680,719, both filed October 6, 2000, both incorporating Chen et al. by reference, and both claiming priority to a Provisional application having Serial No. 60/159,629 filed October 14, 1999. To the extent that the claimed invention is disclosed in U.S. Patent Application Serial No. 09/684,039, U.S. Patent Application Serial No. 09/680,719, and U.S. Provisional Application Serial No. 60/159,629, Chen et al. may not be available as prior art to the presently pending claims.

In addition, it is respectfully submitted that Chen et al. does not disclose or render obvious a textured airlaid fibrous web in which the percentage of composition of material that makes up the peaks is the same as the percentage of composition of material that makes up the valleys and the web height is at least 25% greater than the

average caliper of the web. Independent claim 1 of Applicants' disclosure calls for the percentage of composition of material that makes up the peaks to be the same as that of the valleys. In Chen et al., the percentages of composition are different between the peaks and valleys. Indeed, if Chen et al. were modified so that the percentage of composition of material making up the upper most portions 3 was the same as the percentage of composition of material making up the depressed regions 4 the entire purpose of Chen et al. and its principle of operation would be frustrated.

As discussed in the previous Response, Chen et al. is specifically directed towards an improved web that provides a clean, dry feel of the skin of the wearer and also allows for rapid depth wide transport of liquid through the web into an underlying absorbent core (see Chen et al. at column 2, lines 19-25). Chen et al. seeks to achieve this goal by having the upper most regions 3 include a greater percentage of composition of hydrophobic matter than the depressed regions 4. In this manner, liquid will be removed from the upper most regions 3 and transported therefrom so as to provide a dry touch or dry feel to the upper most regions 3. If the depressed regions 4 included the same amount of hydrophobic material as the upper most regions 3, liquid would be repelled therefrom and would potentially be transported back to the upper most regions 3 or onto the skin of the wearer.

Chen et al. explicitly states that the depressed regions 4 should have a "significantly" lower amount of hydrophobic matter in order to achieve the stated goals of the reference. In contrast, claim 1 of Applicants' application calls for the peaks and valley to have the same percentage of composition of material in their make up. Independent claim 1 of Applicants' application calls for a web that performs and

operates differently than that in Chen et al. because it does not call for a web in which a “significantly” lower amount of hydrophobic amount may be present in the valleys while a greater amount of hydrophobic matter is present in the peaks. Thus, it is respectfully submitted that independent claim 1 patentably defines over Chen et al.

With respect to the height of the web, Applicants note that it is improper to use a patent applicant’s own specification to provide the only suggestion for modifying the prior art. The Federal Circuit has repeatedly warned against using the Applicant’s disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art. Thus, the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. Plainly, the Examiner’s only incentive or motivation for so modifying Chen et al. in the manner suggested in the Office Action results from using Applicants’ disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art, which is improper under 35 U.S.C. § 103. Accordingly, it is respectfully submitted that any such modification of the cited references relies on the impermissible use of hindsight, which cannot be successfully used to support a *prima facie* case of obviousness.

Applicants also traverse the §103(a) rejections to claims 28 and 47 for essentially the same reasons as discussed above with respect to claim 1 and submit that claims 28 and 47 define over Chen et al. and are in condition for allowance.

Applicants’ respectfully submit that all claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at her convenience

Appl. No. 10/029,111  
Amdt. Dated July 18, 2006  
Reply to Office Action of May 18, 2006

should she have any questions concerning this matter or require any additional  
information.

Respectfully submitted,

DORITY & MANNING,  
ATTORNEYS AT LAW, P.A.

Date: \_\_\_\_\_

7/18/2006



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